S. Bij 7

1953. File No. 53.

K Examined

Legal DEPARTMENT
E BRANCH

Subject:— Suits - Bijapur.

Misc. Appln. No. 14 of 1952

V. M. Tapshetti and others .... Applicants
v/s
The Director of Local Authorities,
S.D; Belgaum .... Opponent

For Setting aside an order passed by the Director of Local Authorites directing recovery of Rs. 422-4-3 being the amount of avoidable expenditure incurred by the Municipality as a result of their voting in favour of a certain resolution.

30(9)

File No. S. Bij. 7/53

Std. Scott. Slip 24-B

7/53

Pune

No. 620 of 1953.
Date:-26-4-1953.

To

The Remembrancer of Legal Affairs,
Bombay No.1.

Subject:- Bijapur Misc.Application No.14/1952.
1. V.M.Tapashetti & others. applicants.
Vs.
1. The Director of Local
Authorities, Belgaum. opponent.

LEGAL DEPARTMENT
28 APR 1953

Sir,

The above Misc.Application was fixed for puttin in written statement on 24-4-1953.On that day I applied for two months' time to put in written statement. Now the case is adjoured to 10-6-1953 for putting in written statement.The court is not inclined to grant any further adjournment in this case.I, therefore, request you to move the Government to sanction the defence of the case very early.

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No. 1044
Sub No. 29/4/53
E

Yours faithfully

Abusaad

Dist.Govt.Pleader,Bijapur.

3

Bijapur Miscellaneous Application No. 11 of 1952.

This is a miscellaneous application filed by Shri V.M. Tapshetti and three others of Bagalkot against the Director of Local Authorities, Southern Division, Belgaum under section 13(a) of theBombay Local Fund Audit Act,1930, for setting aside an order dated 10-1-1952 passed by the Director of Local Authorities directing recovery of Rs. 422-4-3 being the amount of avoidable expenditure incurred by the Municipality as a result of their voting in favour of a certain resolution passed by the Bagalkot Municipality of which the applicants were the councillors.

2. The application is defensible.

3. Defence of the same may be sanctioned on the lines of the accompanying brief.

Sol
23/5
Sol(M.L) 2/6

Resubmitted.
The brief has been further revised as directed by the Sol(M.L).
Sol
6/6
Sol(M.L) 6/6

Secy. to Govt. P.H.D 15/6

Revised pending

5/E

Immediate

5

No. 12565/E
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 8th June 1953.

Subject:- Bijapur ~~Civil~~ Misc. Application
~~Suit~~ No. 14 of 1952.

MEMORANDUM:

The District Government Pleader, Bijapur
is informed that the defence of the ~~suit~~ application noted above is sanctioned and he is requested to conduct the same on the lines of the brief a typed copy of which is sent herewith in advance.

Papers of the case in eight files received from the Collector accompany.

for Remembrancer of Legal Affairs.

To
The District Government Pleader, Bijapur

HSP/8/6

Submitted for Signature
8/6

Supdt

G R L D No 14375/C Dt 6/7/53
has been sent to the press on 8/7/53

FM
8/7

Miscellaneous Application No.14/1952.

IN THE COURT OF THE DISTRICT JUDGE,BIJAPUR.

At Bijapur.

1. V.M. Tapshetti and 3 others. -- Applicants.

vs.

2. The Director of Local Authorities S.D.,Belgaum. Opponent.

Herein the opponent opposes the application of the applicants on the following grounds :-

(1) The order of the Director of Local Authorities is legal, valid and proper and is not liable to be set aside.

(2) The allegations in para. 1 of the application to the effect that the conditions of the acquisitio laid down in the valuation report by the Panchas were binding on the Municipality and that the Councillors ha no discretion to postpone or cancel the idea of acquiring the site are not correct.

(3) By passing the resolution in question, a charge was created on the funds of the Municipality whi the Municipality was not able to discharge. Section 40(3) of the District Municipal Act does not apply to the facts of this case, in as much as it does not authorise the municipality to create a charge in the manner in which it has been done in the present case. There is nothing in the proceedings to show that the charge was created in accordance with any provision of the Local Authorities Loans Act, 1914 and thus the provisions of section 7 of the said Act were violated by passing the Resolution. The allegations in para. 4 of the application which are inconsistent with what is stated in this para. are not correct and are denied.

(4) The applicants knew at the time of passing the resolution that the Municipality had not sufficient funds to enable it to meet the liability that was being created. Inspite of this, the applicant

voted for it. This acti n on the part of the applicants amounted to gross negligence and misconduct and they were liable under section 11 of the Bombay Local Fund Audit Act, 1930, apart ~~for~~ from the violation of the provisions of section 7 of the Local Authorities Loans Act, 1914, to be charged the amount of loss casued to the Municipality by their gross negligence and misconduct.

(5). The allegations in para. 2 of the application, subject to what is stated in para. 4 of this written-statement, are not correct and are denied.

(6) There is nothing in section 160 of the District Municipal Act which requires the Municipality to acquire as a matter of course any property in respect of which valuation is once fixed by the Panchas under that section. It is always within the discretion of the Municipality whether a particular property should be acquired or not irrespective of the fact whether the valuation in reppect of it has been fixed by the Panchas or not. In exercising this discretion the members concerned acted in the way referred to in Para. 4 above and thus they become liable to be charged under section 11 of the Bombay Local Fund Audit Act, 1930.

(7) There is nothing to show that the owner of the building had applied for persmission to construct or reconstruct any portion of the building. In the absence of any such application, subsection (3) of section 91A of the Bombay District Municipal Act, 1901, does not apply. The contention of the applicants in para. 3 of the application to the effect" In such a case ------- partly increased" is not correct and is denied.

(8) The avernment of the applicants in para. 3 of the application that the situation of the building was such that its removal was a necessity for public convenience and safety is not true. The further allegation therein that the observations of the Director "that this explanation . . . basis" is not correct and is denied.

(9) The contentions of the applicants in para 5 of their application are not correct. The applicants knew at the time of passing the resolution that the Municipality had not sufficient funds to enable it to meet the liability that they were creating. Inspite of it, the applicants voted for and passed the resolution and they cannot escape the liability for the consequences thereof by throwing the blame on others. It is immaterial whether payments were made by the Municipality in respect of some other acquisitions, and this does not mean that the Municipality was in a position to pay for this acquisition also. The names of Shree Sholapurkar and Shree Ghodeswar were ommitted because they had died before the Director of Local Authorities passed his order dated 10-1-1952. The name of Shree Lutimath was omitted because he had refrained from voting. Further all the members who voted for the resolution being jointly and severally liable, it was open to the Director to pass orders for the recovery of the whole amount from any one or all of them.

(10) The order of the Director of Local Authorities is legal and proper for reasons stated in his order No. A Dt. 8/20, dated 10-1-1952.

It is therefore submitted that the application may be dismissed with costs.

Director of Local Authorities,
S.D. Belgaum.

I Director of Local Authorities S.D. Belgaum, hereby declare that what is stated in paras. to 10 above is true on information received and believed to be true. I have signed this on

Director of Local Authorities, S.D. Belgaum

Suits :

Bijapur.

For setting aside an order dated the 10th January 1952 passed by the Director of Local Authorities directing recovery of Rs. 422-4-3 being the amount of avoidable expenditure incurred by the Municipality as a result of their voting in favour of a certain resolution passed by the Bagalkot Municipality of which the applicants were the councillors.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 14375/E.

Bombay Castle, 6th July 1953.

Letter from the Director of Local Authorities, Southern Division, No. Adt. 8/20, dated the 11th October 1952—Forwarding the papers in the Misc. Application noted in the margin; and requesting sanction to its defence

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.

Miscellaneous Application No. 14 of 1952.

V. M. Tapshetti and others ... ... Applicants;

The Director of Local Authorities, Southern Division, Belgaum ... ... Opponent.

Memorandum to the District Government Pleader, Bijapur, No. 12565/E, dated the 8th June 1953—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the Misc. Application on the lines of the accompanying brief.

By order and in the name of the
Governor of Bombay,

J. R. DHURANDHAR,
Secretary to Government.

G. R. No. 14375/E, L. D., dated the 6th July 1953.

To

*The Local Self-Government and Public Health Department,
*The Director of Local Authorities, Southern Division, Belgaum,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No of 1953.

Copy forwarded for information and guidance to

15—46

BIJAPUR MISCELLANEOUS APPLICATION No. 14 OF 1952.

Chronological Statement of Facts.

The Bagalkot Municipality by its Resolution No. 136 dated 30th June 1938 decided to acquire by private requisition property bearing C. T. S. No. 335/2 belonging to Messrs. Hanmantacharya and Ramchandra Malagi by undertaking to pay the compensation amount or price thereof in three instalments beginning with 1939-40. As the municipality failed to make the payments according to the above Resolution, the parties filed a suit against the Municipality and recovered the amount with interest and costs by getting a decree in their favour. The amount which the Municipality was thus required to pay in addition to the amount of sale price was Rs. 242-0-3 as interest plus Rs. 180-4-0 as costs of the suit. As this expenditure was avoidable and was incurred on account of the unsystematic and illegal methods of acquisition, the Examiner of Local Fund Accounts, Bombay by his letter No. L.-2/4—4760, dated 18th January 1944 to the Commissioner, Southern Division, Belgaum recommended that the same may be surcharged on the councillors concerned. Thereupon notices were served upon the applicants who had voted for the aforesaid Resolution to show cause why the said expenditure should not be surcharged on them. In reply to these notices, they by their letter dated 17th September 1951 addressed to the Collector stated that they had acted in the best interests of the Municipality etc. and that the notice of surcharge issued against them may be cancelled. But the Director of Local Authorities having not found their explanation to be satisfactory, he by his Order No. ADT. 8/20 dated 10th January 1952 certified under section 11 of the Bombay Local Fund Audit Act, 1930 that the amount should be recovered from them. Feeling aggrieved by the said order the applicants have now filed the present application under section 13(*a*) of the said Act on 15th February 1952 to the District Court to set aside the said order.

Grounds of Defence.

The Resolution to the passing of which the applicants were a party is at p. 3 in File No. III. By this Resolution the Municipality decided to acquire by private negotiations, among other things, C. T. S. No. 335/2 belonging to Messrs. Hanmatacharya and Ramchandra Malgi by paying the sale price to them in three annual instalments beginning with the year 1939. Thus by the passing of the aforesaid Resolution a charge was created on the funds of the municipality which the municipality was not able to discharge, with the result that a suit was filed against it by the owners and it had to pay to them interest and costs of the suit amounting to Rs. 422-4-3 in addition to the amount of the sale price payable to them. Attention in this connection is invited to section 7 of the Local Authorities Loans Act, 1914 which provides *inter alia* that except as provided by or under that Act, no local authority shall for any purpose, borrow money upon, or otherwise in any

way charge its funds. There is nothing in the proceedings to show that the charge in the present case was created by the Municipality in accordance with any provision of the Act or of any rules made thereunder. It therefore violated the provisions of section 7 of the aforesaid Act by passing the Resolution referred to above. Furthermore, at the time of passing this Resolution, the applicants knew that the Municipality had not sufficient funds to enable it to meet the liability that was being created. Inspite of it they voted for it. This action on the part of the members concerned was imprudent and amounted to gross negligence and misconduct, and they were liable under section 11 of the Bombay Local Fund Audit Act, 1930, apart from the violation of the provisions of section 7 of the Local Authorities Loans Act, 1914, to be charged the amount of loss caused to the municipality by their gross negligence and misconduct. This came to the notice of the Examiner of Local Fund Accounts when he examined the accounts of the Municipality for the years 1942-43 and 1943-44 and as required by section 9 of the Bombay Local Fund Audit Act, 1930 he included in his report a statement of the amount of loss which appeared to him to have been caused by the gross negligence and misconduct of these persons. Whereupon the Director of Local Authorities acting under section 11 of the Bombay Local Fund Audit Act, 1930 charged the said amount against them. This action of the Director of Local Authorities was perfectly legal and valid. It is however, contended by the applicants that once the valuation was fixed by the *panchas* under section 160 of the Bombay District Municipal Act, 1901 they had no discretion either to dispute the valuation or to postpone or cancel the idea of acquiring the site. In other words, their contention is that the approval recorded under Resolution No. 136 was a formal one and it had to be given as a matter of course. This contention of the applicants is not at all valid and it should be denied. There is nothing in section 160 of the Bombay District Municipal Act which requires a municipality to acquire as a matter of course any property in respect of which the valuation is once fixed by the *panchas* under that section. It is always a matter within the discretion of the municipality whether a particular property should be acquired or not irrespective of the fact whether the valuation in respect of it has been fixed by the *panchas* or not. In exercising this discretion the members concerned acted unwisely particularly when they knew that the municipality had not sufficient funds to meet the liability which they were creating. They cannot now escape their liability by contending that they had no dircretion in the matter. It is also urged by the applicants that as the municipality had no standing funds to enable it to make immediate payment they had arranged for the payment of compensation in three instalments to safeguard the interest of the municipality. To this we must reply by saying that if that was the case, they should have dropped the acquisition altogether instead of going in for it by making the compensation payable in annual instalments. The interest of the municipality would have been better served by the adoption of that course than by the course decided upon by them at the time.

Another contention of the applicants is that the regular line of road for which the site in question has been purchased has already been fixed under section 91A of the District Municipal Act. In such a case it is obligatory on the municipality either to acquire the site or to grant permission for new construction within the road line. Presumably the applicants rely upon sub-section (3) of the said section 91-A. On going through it, it will appear that it applies when the owner of any building coming within the regular line of a public street applies for permission to construct or reconstruct any portion of the said building. There is nothing to show that any such application was made by the owners in the present case. In the absence of it, sub-section (3) of section 91A will not apply. This contention of the applicants has therefore no substance and it should be denied. The averment of the applicants in paragraph 3 of the application that the situation of the building was such that its removal was a necessity for public convenience and safety is false and it should be denied.

It is also contended by the applicants that the resolution in question does not in any way contravene the provisions of the Local Authorities Loans Act. On the contrary it is supported by the provisions of sub-section (3) of section 40 of the Bombay District Municipal Act, 1901. The municipality's power under the said sub-section (3) to enter into contracts, the performance of which cannot be completed within the official year current at the date of the contract concerned is not disputed. But if by entering into any such contract any charge is sought to be created on the funds of the municipality, then such a charge must be in accordance with the provisions of Local Authorities Loans Act, or the rules, etc. made thereunder. In the present case as already shown above the municipality by passing the resolution in question created a charge on the funds of the municipality, which is not covered by any provision of the Local Authorities Loans Act, and as such it has violated the provisions of section 7 of that Act. The contention of the applicants that by the resolution in question no provision of the Local Authorities Loans Act has been contravened is not therefore valid and it should be denied. Furthermore it should be urged that irrespective of the fact whether there was any violation of the provisions of section 7 of the Local Authorities Loans Act or not, the members concerned were guilty of gross negligence and misconduct inasmuch as they voted for the resolution knowing full well that the municipality had no sufficient funds to meet the liability they were creating and as such they were liable to be charged the amount of loss caused to the Municipality by their gross negligence and conduct, under section 11 of the Bombay Local Fund Audit Act, 1930.

Another contention of the applicants is that if the municipality had intended, it could have paid the instalments fixed in connection with the acquisition of C. T. S. No. 335/2 at the time agreed upon and in that case the owners of the said number would not have gone to the Court; it is not they who are liable for the omission to make payments as agreed upon, but the President and the Board who were in office during the next three years during which the instal-

ments became payable. This contention of the applicants is also not valid. The applicants knew at the time of passing the Resolution in question that the Municipality had not sufficient funds to enable it to meet the liability that they were creating. Inspite of it, they passed the resolution for the acquisition of C. T. S. No. 335/2 which was an imprudent act on their part and they cannot now escape liability for the consequences thereof by throwing the blame on the President and the Board for non-payment of the instalments as agreed upon. It is immaterial whether payments were made by the Board in respect of certain other acquisitions. This does not prove that the municipality was in a position to pay for this acquisition also.

It is also contended by the applicants that the names of some Councillors, namely Shri Lutimath R. V. Sholapurkar and A. K. Ghodeshwar have been omitted by the Director of Local Authorities even though they were equally responsible in this matter. The names of Shri Sholapurkar and Ghodeshwar were omitted because they had died before the Director of Local Authorities passed his order of 10th January 1952 holding the applicants responsible for the avoidable expenditure of Rs. 422-4-3 while the name of Shri Lutimath was omitted because he had refrained from voting and so he could not be held responsible. Apart from it, all the members who had voted for the resolution being jointly and severally responsible, it was open to the Director of Local Authorities to pass orders for the recovery of the whole amount from anyone of them whom he considered to be the most solvent. This contention of the applicants has therefore no force and it should be denied.

In addition to the above grounds, the District Government Pleader is requested to rely upon the grounds taken by the Director of Local Authorities in his order of 10th January 1952 referred to above.

For all these reasons, it should be urged that the applicants' application fails and it may be dismissed with costs.

19

No. 194 of 1955.
12-2-1955.

To

The Remembrancer of Legal Affairs,
Bombay Castle, Bombay No.1.

Subject:- Misc.Application No.14 of 1952
on the File of the Court of District
Judge,Bijapur,
(1)V.M.Tapshetti and others of
Bagelkot.
vs.
(1) TheDirector of Local Authorities
S.D.Belgaum.

Sir,

4763
12.2.55

With reference to your Memorandum No.12565/E of 8-6-1953 on the above subject, I have the honour to state that the District Judge delivered Judgment ~~in~~ to-day setting aside the order of the Director of Local Authorities S.D.Belgaum dated 10-1-1952 and allowed the application of the applicants with costs.

(2) I have forwarded herewith an uncertified copy of the Judgment, and in view of the reasons in the Judgment, I am of opinion that the decision should be acquiesced in.

(3) I have to-day applied for certified copy of the Judgment and also of the order No.A.D.T. 8/20 dated 10-1-1952 of the D.L.A. I will forward them to you after they are furnished to me.

Yours faithfully,

Sd.A.C.Angadi.
District Government Pleader,
Bijapur.

No.195 of 1955
12-2-55.

Advance copy forwarded with respects to the Remembrancer of Legal Affairs,Bombay Castle,Bombay No.1. along with an un-certified copy of Judgment.

A.C.Angadi
Dist.Govt.Pleader,
Bijapur.

Through the Collector of Bijapur with respects along with the Eight Files that had been sent to me by the Remembrancer of Legal Affairs, with his Memorandum No.12565/E of 8-6-1953.

It is requested that this reference and the copy of the Judgment and the Eight Files sent herewith may please be forwarded through the Director of Local Authorities S.D.Belgaum.

Sd.A.C.Angadi.
Dist.Govt.Pleader,Bijapur.

LD

Submitted

An uncertified
copy of judgment in C.A.
No 14/52 decided against
Govt on 12.2.55 is
put up for orders

N/A
18/2

Sol (AGC) the O.G.P says
that District Court's decision should
be acquiesced in. Mr Rambay Lodra
Land Acquisition Act does not provide
for any appeal over the Dist.
Court's decision in this matter.
No further action is necessary

22-2-55

In the Court of the District Judge,Bijapur.

at Bijapur.

Misc.Application No.14 of 1952.

1. V.M.Tapashetti.
2. S.S.Nara.
3. Y.R.Patki.
4. R.V.Savanur .... Applicants.

vs.

1. The Director of Local Authorities, S.D.Belgaum. .... Opponent.

Mr.K.S.Deshpande for the applicants.

Mr.A.C.Angadi,Govt.Pleader for opponent.

Judgment.

This is an application under section 13(1)(a) of the Bombay Local Fund Audit Act, 1930, for setting aside the order dated 10-1-1952, passed by the Director of Local Authorities, S.D.M,Belgaum, certifying under Section 11 of the said Act that the amount of Rs 422-4-3 should be recovered from the applicants.

2. The relevant facts leading up to this application may be briefly stated thus :

Some time between 1934 and 1938, the Bagalkot Municipality embarked upon acquiring certain properties for the purpose of road widening.On 8-6-1938, the General committee of the Municipality passed a resolution appointing messrs Sholapurkar and Patki as Panchas to fix the value of the houses bearing C.T.S.Nos. 8,338, 339 and 335 in Ward No.II and C.T.S.No.183 in Ward No.1 (vide Ex.23). On 30-6-1938, the General Committee approved the panch valuation received from the sub-committee and resolved inter alia that "C.T.S.No. 335/2 being commonly held by messrs Hanamantacharya Malgi and Ramacharya Malgi, the compensation amount should be paid proportionately for the portions surrendered by each after passing the sale deed by

each separately. The compensation amount of the serial Nos. 1 and 3 be paid by providing in the next budget and the serial Nos. 2 and 4 by three instalments and the 1st instalment should begin from the next year "(vide Ex.29). S.No.4 related to C.T.S. No. 335/2 which stood in the name of Hanmantacharya Siddacharya Malgi and a compensation amount of Rs 2300/- was to be paid to him and his uncle Ramacharya Malgi in the proportion of Rs 1160/- and 1140 by three annual instalments commencing from the year 1939-40. After the above resolution, the Municipality took sale deeds dated 25-9-1938 from Hanmantacharya and his brother Vedavyasacharya and their uncle Ramacharya.The Municipality also took possession of the property bearing C.T. S.No.335/2.Hanmantacharya and Vedavyasacharya were paid Rs 350/- on account of the first instalment. So also Ramacharya was paid a similar amount in that connection. As the next two instalments were not paid by the Municipality, Hanmantacharya and Vedavyasacharya filed civil suit No. 544 of 1942 to recover a sum of Rs 865-8-0 together with costs and future interest. Ramacharya also filed civil suit No. 545 of 1942 to recover a sum of Rs 843-8-0 together with costs and future interest. In the former suit, the Court passed a decree on 27-9-1943 for Rs 850/- together with proportionate costs and future interest on the principal amount of Rs 810 at 4 percent per annum payable in three equal annual instalments commencing from 15-6-1944, with a default clause that on failure to pay any two instalments, the municipality should pay the whole amount then due (vide certified copy of the decree Ex.35). A similardecree was passed on 27-9-1943 against the municipality directing it to pay Rs 825/- together with proportionate costs and future interest on the principal sum of Rs 790/- at 4 percent per annum payable in 3 annual instalments commencing from 15-6-1944 with a default clause of two instalments (vide certified copy of the decree Ex.36)

3. The auditor audited the accounts of the municipality for the years 1942-43 and 1943-44.The extract from the audit

note on the accounts of the municipality for the years 1942-43 and 1943-44 has been produced at Ex.27 and it will be seen from it that the auditor took exception to the Court costs of Rs 180-4-0 and past interest of Rs 104-5-2 which the municipality was required to pay as the result of the decrees in civil suits Nos. 544 of 1942 and 545 of 1942. He observed :"As this expenditure was avoidable andwas incurred solely on account of the unsystematix and illegal methods of acquisition inasmuch as the creating of liabilities for future payments contravened the provisions of the LocalAuthorities Loans Act, vice G.M.G.D.No. 3798/33A dated 24th April 1940, the expenditure has been recommended to the Commissioner, S.D., under this office letter No. L.2/4-1760 dated the 18th January 1944 to be surcharged on the councillors concerned".The letter referred to in the above note is at Ex.28 and Paragraph 3 of that letter which is relevant for purposes of this case reads thus

"Paragraph 3(b):- Expenditure amounting to Rs 284--9-2 incurred for the defence of the two suits in connection with the price of lands whose acquisitions came to be sanctioned on the promise of making payment as funds permit in contravention of the specific provisions of the Local Authorities Loans Act may I recommend be surcharged on the councillors concerned".

4. Acting upon paragraph 4 of the audit note for the years 1942-43 and 1943-44 and letter No.L.2/4-4760, dated 18-1-1944. from the Examiner, LocalFund Accounts, Bombay, the Director of Local Authorities, S.D.,Belgaum, passed an order on 10-1-1952, certifying under Sec.11 of the Bombay Local Fund Audit Act, 1930, that the amount of Rs 422-4-3 should be recovered from the applicants.

5. Aggrieved by the above order, the applicants have made this application under section 13(1)(b) of

the Bombay Local Fund Audit Act, 1930.

6. The applicants alleged in their application that before C.T.S.No.335/2 was acquired, the panchas fixed the valuation under section 160 of the District Municipal Act. This valuation was binding on the municipality. Therefore, the Councillors who voted for the resolution No. 136 dated 30-6-1938, had no discretion either to dispute the valuation or to postpone or cancelx the idea of acquiring the site. The approval recorded under Resolution No.136 was a formal one. However, in order to safeguard the interest of the municipality, it was resolved that the compensation should be paid in three annual instalments the regular line of road for the widening of which the site in question was purchased had already been fixed under section 91(A) of the District Municipal Act. That being so, it was obligatory on the municipality either to acquire the site or to grant permission for new construction within the road line. Had the site not been acquired, the owner would have applied for permission to build over the site inwhich case the cost of subsequent acquisition would have partly increased. Also the situation of the building was such that its removal was a necessity for public convenience and safety. The acquisition of the site was not against the provisions of the Local Fund Audit Act or the Local Authorities Loans Act, 1914. The Resolution No.136 was in consonance with the provisions of section 40(3) of the District Municipal Act. If the municipality had made the payments in the specified number of instalments, the owners of C.T.S.No. 335/2 would not have gone to the Court. If at all, there was any irregularity in making payments, the blame was clearly on the President or the Board which was in office during the next three years during which the instalments became payable. In any case, the applicants were not at all liable for the omission to make the payments punctually. In fact, during the period when the Municipality was required to pay the amount in three instalments, the municipality did make

payments in respect of the subsequent acquisitions. So, the municipality was in a position to pay the instalments if it wwnted to, to the owners of C.T.S.No.335/2 before they approached the civil Court.

7. The Director of Lodal Authorities has produced his written statement at Ex.21 denying the various allegations made by the applicants in their application and stating that the order passed by him is proper and legal. According to him, by passing the resolution in question a charge was created on the funds of the municipality which the municipality was not able to discharge. Section 40)3) of the District Municipal Act does not apply to the facts of the case inasmuch as it does not authorise the municipality to create a charge in the manner in which it has been done in the present case. There is nothing in the proceedings to show that the chargewas created in accordance with the provisions of the Local Authorities Loans Act, 1914 and thus provisions of section 7 of the said Act were violated by passing the resolution. The applicants knew at the time of passing the resolution that the municipality had not sufficient funds to enable it to meet the liability that was being created. In spite of this, the applicants voted for it. This action on their part amounted to gross negligence and misconduct and they were liable under section 11 of the Bombay LocalFund Audit Act, 1930, apart from the violation of the provisions of section 7 of the Local Authorities Loans Act, 1914, to be charged the amount of loss caused to the municipality by their gross negligence and misconduct.Section 160 of the District Municipal Act had no application. There is nothing to show that the owner of the building had applied for permission to construct or reconstruct any portion of the building. In the absence of any such application, sub-section(3) of Section 91(A) of the Bombay District Municipal Act,

1901, does not apply. The applicants knew at the time of passing the resolution that the municipality had not sufficient funds to enable it to meet the liability that they were creating. In spite of that, the applicants voted for and passed a resolution and they cannot escape the liability for the consequences thereof by throwing the blame on others. It is immaterial whether the payments were paid by the Municipality in respect of some other acquisitions. This does not mean that the municipality was in a position to pay for this acquisition also. In the end, the Director of LocalAuthorities, prays that the application should be dismissed with costs.

8. The only point, therefore, for consideration is whether this is a fit case for setting aside the order passed by the Directior of Local Authorities on 10-1-1952 certifying under section 11 of the Bombay Local Fund Audit Act, 1930, that the amount of Rs 422-4-3 should be recovered from the applicants.

9. My answer on the point will be in the affirmative for the following reasons.

10. I have set out above the circumstances in which this application came to be made by the applicants for setting aside the order of the Director of Local Authorities. As I read the Audit Notex, the order of the Director of Local Authorities and his written statement. I find that they are inconsistent in several respects indicating thereby that the Director of Local Authorities is not sure of his ground. Under section 4 of the Bombay Local Fund Audit Act, 1930, the accounts of a local authority are subject to audit in all respects in the manner provided by or under the Act. The accounts are audited by a auditor who is known as examiner of Local Fund Accounts. As soon as practicable, after the completion of the audit, the Examiner has to prepare a report on the accounts audited and examined by him and he has to send that report to the local authority

concerned and copies thereof to such officers and bodies as the provincial Government may direct, as required by Section 8 of the Act. Under section 9, the Examiner shall include in his report a statement of (a) every payment which appears to him to be contrary to law,(b) the amount of any deficiency or loss which appears to have been caused by the gross negligence or misconduct of any persons,(c) the amount of any sum received which ought to have been but is not brought into account by any person, and (d) any material impropriety or irregularity which he may observe in the accounts other than those mentioned in clauses (a),(b) and (c) above. Sub-Section (3) of section 10 empowers an Examiner to state in his report whether the amounts to which the defects or irregularities relate to, in his opinion, be surcharged or charged. Under proviso to sub-section (3), the Examiner has to submit his report to such officer, being the Head of the Department, as the Provincial Government may direct. Such offider has to take such action as may be necessary regarding anydefect or irregularities falling under clause (c) of sub-section (2) which may have been brought to the notice in the report. If he is of the opinion that the amount to which such defects or irregularities relate should be surcharged or charged, he is to forward the report to the commissioner together with his recommendation in that behalf. Under section 11, the Commissioner may, after considering the recommendation of the examiner or of any Head of the Department under proviso to sub-section (3) of Section 10, as the case may be, and after taking the explanation of the person concerned, or making such further inquiry as he may consider necessary, disallow any item which appears to him to be contrary to law and surcharge the same on the person making, or authorising the making of the illegal payment; and may charge against any person responsible

therefor the amount of any deficiency or loss caused by the gross negligence or misconduct of that person or any sum received which ought to have been but is not brought into account by that person and shall, in every such case, certify the amount due from such person. In the present case, it is under this section that the Director of Local Authorities has certified that the amount of Rs 422-4-3 should be recovered from the applicants. It is clear from the audit note at Ex.27 that the Examiner took exception to the cost of Rs 180/- and past interest of Rs 104-5-2 awarded by the Court under the two decrees in Civil suits Nos. 544 and 545 of 1942 and observed that this exception was aboidable and was incurred solely on account of the unsystematic and illegal methods of acquisition inasmuch as creating of liabilities for future payments contravened the provisions of LocalAuthorities Loans act, 1914, In short, the only ground on which the examiner impugned the two items of Rs 180/- and 104-5-2 was that the provisions of the Local Authorities Loans Act were contravened by the applicants while passing the Resolution No. 136. The same ground is to be found in his letter Ex.28 dated 18-1-1944.

11. The Director of Local Authorities, however, has set out several grounds in his order which are difficult to follow. In the earlier part of his order, he refers to the Resolution No. 136 dated 30-6-1938, passed by the municipality to acquire C.T.S.No. 335, Ward No.II, belonging to V.H.Malagi and Ramacharya Malagi and directing the amount of compensation to be paid to them by three annual instalments beginning with 1939-40. He further refers to the two suits filed by the abovenamed persons and to the resolution No.206 dated 20-12-1942 passed by the Municipality to defend the suits. He then refers to the audit note of the Examiner, Local Fund Accounts, Bombay, without creating liabilities for future payments contravened the provisions of the Local Authorities Loans Act, 1914, and also the Examiner's letter dated 18-1-1944 recommending for surcharge for the avoidable expenditure on account of interest and court costs

paid by the municipality. It is extremely interesting to note that although the examiner had in his report referredto the Court costs of Rs 180-4-0 and past interest of Rs 104-5-2, the Director of Local Authorities included in his order the interest of Rs 242-0-3 and Rs 60/- on account of additional court costs incurred for defending the suits in pursuance of Resolution No.206 dated 20-12-1942.He issued notices to the two sets of persons who voted for the resolution No.136dated 30-6-1938 and Resolution No.206 dated 20-12-1942.The first set of persons connected with resolution No.136 were sought to be held liable for the two items of Rs 242-0-3 and Rs 180-4-0 while the second set of persons connected with Resolution No.206 were sought to be held liable for the expenditure of Rs 60/-.After hearing them, he accepted the contention of the second set of persons that on account of their decision to defend the suit, interest at 6 percent claimed by the parties was reduced to 4 percent, thus resulting in a saving of Rs 117-9-0 and held that the expenditure of Rs 60/- being court costs on account of the defence of the suitwas incurred in the interest of the municipality. As regards the other set of persons, the graveman of his charge was that they should not have decided to acquire the property.If the property really constituted a danger, the municipality should have provided for the entire costs of its acquisition during the same year.Not even a part of the amount was provided in the year in which it was decided to acquire the property. The Municipality wasbeingadvised since long to stop the haphazard acquisition of properties and to have a systematic scheme of road widening, but it continued to acquire properties recklessly even though it could not provide funds for the same.In this view, the Director of Local Authorities rejected the explanation offered by

these applicants as unsatisfactory and directed them to pay the amount of Rs 422-2-3.It is clear from his order that he objected to the acquisition of the property in quedtion by the municipality and therefore he wanted the applicants to make good the loss sustained by the municipality in the shape ofcosts and past interest.

12. Some additional grounds are put forth in his written statement (Ex.21) by the Director of Local Authorities and gross negligence and misconduct are attributed to the applicants.

13. As far as I can see, the principal question for determination in this case is whether the municipality committed an illegality in voting for the acquisition of C.T.S.No.335 underResolutionNo. 136 dated 30-6-1938.It is indisputable that the municipality has power to acquire property for the purpose of road widening.Sub-section (1) of section 91A of the Bombay District Municipal Act,1901, enjoins that it shall be the duty of every city municipality to prescribe a line on each side of every public street within the municipal district and the municipality may from time to time prescribe a fresh line in substitution for any line so prescribed, or for any part thereof.The line for the time being so prescribed is called "a regular line of the public street" as provided in sub-section(2) of that section.Sub-Section(3) says thatexcept under the provisions of section 113, no person shall construct any building or reconstruct any portion of any building within the regular line of the public street without the permission of the municipality under section 96.The applicants allegation in para 3 of their application that the regular line of road for the widening of which the site in question had been purchased had already been fixed under x section 91A and has not been denied by the Director of Local Authorities in his written statement Ex.21.There is no dispute that some time after the Resolution No.136 dated 30-6-1938 was passed by the General Committee of the

Municipality, sale deeds were taken on 25-9-1938 and so also the possession of the property comprised therein. In short, the municipality became the owner of C.T.S.No. 335 in virtue of the sale-deeds dated 25-9-1938 and took possession of the same as such. In the two suits filed by the vendors, the legality of either the resolution No.136 or the sale-deeds was not challenged. I do not think that the municipality committed an error or an illegality in acquiringC.T.S.No. 336 which came within "the regular line of the public street".

14. The legality of the resolutionNo.136 is challenged by the Director of Local Authorities on the sole ground that it contravened the provisions of sec.7 of the Local Authorities Loans Act, 1914, This contention is evidently based upon the report of the examiner Local Fund Accounts, Bombay. In my opinion, however, both the examiner and the Director of Local Authorities, have misconstrued and misapplied the provisions of Section 7 of that Act.The very title of the Act shows that it refers to loans contracted or to be contracted by local authorities.It is termed as "an Act to consolidate and amend the law relating to the grant of loans to local authorities".The preamble of the Act makes the position very clear.It reads thus :"Whereas it is expedient to consolidate and amend the law relating to the borrowing powers of local authorities; It is hereby enacted as follows: "Section 3 of the Act empowers a local authority, subject to the prescribed conditions, to borrow on the security of its funds or portion thereof for any of the purposes enumerated therein.Proviso (1) speaks of the maximum period fixed for the repayment of the loan and proviso (2) fixes the extent of the amount which could be borrowed by the local authority.Section 7 says that except as provided by or under the Act, no local authority shall, for any

purpose, borrow money upon, or otherwise charge its funds; and any contract otherwise made for that purpose after the passing of the Act shall be void.The proviso to that section engrafts certain exceptions and says that nothing herein contained shall be deemed (a) to preclude any local authority from exercising the borrowing powers conferred on it by any special enactment now or hereafter in force, or(b) to affect the power conferred on any local authority by any such enactment to charge its funds, by guaranteeing the payment of interest on money to be applied to any purpose to which the funds of the local authority can legally be applied.If we consider the scheme of the Act, it will be apparent that it has reference only to the borrowing powers of local authorities.If the Act is interpreted in the sense in which it has been done by the examiner and the Director of Local Authorities, some of the provisions of the BombayDistrict Municipal Act concerning acquisition of properties for the purpose of road widening will be rendered bugatory.Since section 7 does not come into play in the present case, the very basis on which the Director of Lodal Authorities certified that the amount of Rs 422-4-3 should be recovered from the applicants disappears.

15. It is not in dispute that after the property in question was acquired by the municipality, the vendors were paid the first instalment of Rs 700/- Ex.34, which isxxxxx a certified copy of the revised budget estimate for the year 1939-40, shows that in that year a sum of Rs 5000/- in connection with compensation to road widening was provided. In the previous two years also some provion appears to have been made in that connection.If the Board had come into existence after the triennial of which the applications were the members failed to pay the balance of the compensationamount, the applicants cannot be held responsible for the costs and interest awarded in civil suits Nos. 544 and 545 of 1942.It appears from the allegations made in the application by the applicants that the subsequent Board did pay compensation amount for the

subsequent subsequent acquisitions, thus compelling the vendors of the property in question to file Civil suits Nos. 544 and 545 of 1942.I do not think that the view of the Director of Local Authorities that unless some budget provision is made, no property could be acquired is sound. Sub-section(3) of sec.40 provides that in the case of every contract which will involve expenditure, not covered by the budget grant of every contract the peeformance of which cannot be completed within the official year current at the date of the contract, the sanction of the municipality by a resolution passed at a general meeting is required.In short, the contracts rererred to above could be validated by passing a resolution although they are not covered by the budget grant or could not be completed within the current year.Consequently, it seems unnecessary to make provision in the budget first and then acquiree property for road widening. According to the applicants, the situation of the building was such that its removal was absolutely necessary for the sake of public convenience and safety.If thatbe so, the municipality cannot be said to have "continued to acquire properties recklessly even though it could not provide funds for the same" as observed by the Director of Local Authorities.

16. In any case, I find it difficult to sustain the order of the Director of Local Authorities and therefore it must be set aside.

Order.

17. The order of the Director of Local Authoritie dated 10-1-1952, is set aside and the application is allowed with costs.

12th February 1955. Sd.N.S.Metrani.

Dist.Judge.

.....

No. 10417/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 17th May 1955.

To

The Collector of Bijapur.

Subject:- Misc. Application No. 14/52
(1) V.M.Tapshetti & Others
Vs.
(1) The Director of Local Authorities,
S.D., Belgaum.

Sir,

With reference to your endorsement No. MUN-749, dated the 17th February 1955 forwarded through the Director of Local Authorities, S.D., Belgaum, on the above subject, I have the honour to state that Government has decided not to take further action in the matter.

Papers in 8 files received with your above letter are returned herewith.

Yours faithfully,

for Remembrancer of Legal Affairs.

Copy to:-

(1) The Director of Local Authorities, S.D., Belgaum with reference to his endorsement No. Adt. 8/20, dated 5-5-55.

(2) The District Government Pleader, Bijapur with reference to his letter No. 194, dated 12-2-55.

KM/27.5.

Suits:-
Bijapur.

37

For setting aside an order dated the 10th January 1952 passed by the Director of Local Authorities directing recovery of Rs.422-4-3 being the amount of avoidable expenditure incurred by the Municipality as a result of their voting in favour of a certain resolution passed by the Bagalkot Municipality of which the applicants were the councillors.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 10829/E
New Secretariat, Foreshore Road,
Bombay, 23rd May 1955.

Read Government Resolution, Legal Department No.14375/E, dated the 6th July 1953.

Letter from the District Government Pleader, Bijapur No. 194 dated the 12th February 1955, stating that the Misc. Application No. 14 of 1952 noted in the margin was decided by the District Judge, Bijapur on the 12th February 1955, when the following order was passed:-

In the Court of the Civil Judge (Senior Division), Bijapur.

Miscellaneous Application No.14 of 1952.

V.M.Tapshetti and others... ...Applicants;
Vs.
The Director of Local Authorities, Southern Division, Belgaum. ...Opponent.

> " The order of the Director of Local Authorities dated 10-1-1952, is set aside and the application is allowed with costs."

Letter from the District Government Pleader, No. 194, dated the 12th February 1955, forwarding an uncertified copy of the judgment .

RESOLUTION:- The result of the Misc. Application is recorded.

By order and in the name of the Governor of Bombay,

23/5

D.P.Shikhare
23/5

(D. P. SHIKHARE)
original Deputy Secretary to Government.

23/5

To

The Local Self Government and Public Health Department,
The Director of Local Authorities, Souther Division, Belgaum,
The District Government Pleader, Bijapur.

Submitted for signature -
20/5
J.S. Mehta
D-S Civil

CKM/20.5.

Sultol. after as

Tik. m. S. Bijapur 7/53

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J.S. Wig.

C. Bijapur 7/53

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